

Indiana State Teachers' Retirement Fund

Request for Qualifications

for

LEGAL SERVICES

Inquiry Due Date: April 17, 2006, 3:00 p.m., E.S.T.

Response Due Date: May 1, 2006, 3:00 p.m., E.S.T.

SECTION ONE GENERAL INFORMATION

1.1 INTRODUCTION AND BACKGROUND

The Indiana State Teachers' Retirement Fund ("TRF" or "Fund") is soliciting qualifications from all firms interested in being selected to provide the legal services described in Exhibit A, Scope of Work.

TRF is a non-profit, quasi-state organization that was established in 1921. TRF administers the pensions for public school teachers, covered university instructors and state institutional teachers in the State of Indiana. TRF serves approximately 74,000 active members and 38,500 retirees and beneficiaries.

1.2 ISSUER

TRF has issued this RFQ in accordance with Indiana statutes governing TRF's administration. The staff of TRF has prepared the content herein. One (1) copy of this RFQ may be provided free of charge from TRF, or a copy may be obtained from TRF's website (www.in.gov/TRF). A nominal fee will be charged for providing additional hard copies.

1.3 DUE DATE AND FORMAT FOR QUALIFICATIONS

All responses must be received at the address below no later than May 1, 2006, at 3:00 p.m., E.S.T. Each Respondent must submit one original (marked "Original"), one copy of the response in CD ROM format, and three hard copies of the response, including the transmittal letter and other related documentation as required by this RFQ. The response must be addressed/delivered to:

Mr. Tony Gemmill
Indiana State Teachers' Retirement Fund
150 W. Market Street, Suite No. 300
Indianapolis, IN 46204

Any response received after the due date will not be considered. Any late responses will be returned, unopened, to the Respondent, upon request, within thirty (30) days of filing.

1.4 MODIFICATION OR WITHDRAWAL OF OFFERS

Responses to this RFQ may be modified or withdrawn in writing or by fax notice received prior to the date specified for receipt of responses. The Respondent's authorized representative may also withdraw the response in person, providing his or her identity is made known and he or she signs a receipt. Responses may not be withdrawn after the response due date has passed.

Modification to or withdrawal of a response received after the date specified for receipt of responses will not be considered. If it becomes necessary to revise any part of this RFQ or if additional data is necessary for an

exact interpretation of provisions of this RFQ prior to the due date for responses, a supplement will be posted by TRF on its website (www.in.gov/TRF). If such supplemental issuance is necessary, TRF reserves the right to extend the due date for responses to accommodate such interpretations or additional data requirements.

1.5 JOINT BIDS / SUBCONTRACTING

A Respondent may not join with any other related or non-related firms in responding to this RFQ. However, if TRF finds multiple Respondents acceptable, or if a Respondent specializes or is only able to provide one part of the range of services required, TRF reserves the right to retain more than one Respondent. Please inform TRF if you are able to provide only part of the requested services.

1.6 CONFIDENTIAL INFORMATION

Respondents are advised that materials contained in responses are subject to the Indiana Public Records Act, IC 5-14-3 et seq., and, after the contract award, may be viewed and copied by any member of the public, including news agencies and competitors. Respondents claiming a statutory exception to the Indiana Public Records Act must place all confidential documents (including the requisite number of copies) in a sealed envelope clearly marked "Confidential" and must indicate in the transmittal letter and on the outside of that envelope that confidential materials are included. The Respondent must also specify which statutory exception provision applies. TRF reserves the right to make final determinations of confidentiality. If TRF does not agree that the information designated is confidential under one of the disclosure exceptions to the Indiana Public Records Act, it may either reject the response or discuss its interpretation of the allowable exceptions with the Respondent. If agreement can be reached, the response will be considered. If agreement cannot be reached, TRF will remove the response from consideration for award and return the response to the Respondent. TRF will not consider information regarding compensation to be confidential information.

1.7 RFQ RESPONSE COSTS

TRF accepts no obligations for costs incurred by Respondents.

1.8 TAXES

TRF is exempt from federal, state, and local taxes. TRF will not be responsible for any taxes levied on the Respondent as a result of any contract resulting from this RFQ.

1.9 DISCUSSION FORMAT

TRF reserves the right to conduct discussions, either oral or written, with those Respondents determined by TRF to be qualified to perform the services described in Exhibit A, Scope of Work. TRF also reserves the right to conduct clarifications to resolve minor issues.

1.10 CALENDAR

The following is the expected timeline for the RFQ.

<u>ACTIVITY</u>	<u>COMPLETION DATE</u>
RFQ published/released	April 3, 2006
Respondent's inquiry period ends	April 17, 2006
Answers distributed	April 24, 2006
Respondent's response period ends	May 1, 2006
Discussions and evaluations	Week of May 1, 2006
Determination of qualifications	May 8, 2006
Notify selected Respondents	May 9, 2006

SECTION TWO RESPONSE PROCEDURES

2.1 INQUIRIES ABOUT THE RFQ

All inquiries and requests for information regarding this RFQ must be submitted in writing by e-mail to:

Mr. Tony Gemmill
tgemmill@trf.in.gov

no later than April 17, 2006, at 3:00 p.m. TRF reserves the right to judge whether any questions should be answered in writing, and copies of any such written answers will be distributed to all prospective Respondents who are known to have received a copy of the original RFQ.

Inquires are not to be directed to any staff or Board member of TRF, except as outlined in this Section. Such unauthorized communications may disqualify Respondent from further consideration. TRF reserves the right to discuss any part of any response with a particular Respondent for the purpose of clarification. Respondents will be given equal access to any communications about the RFQ that take place between TRF and other Respondents.

2.2 DETERMINATION OF QUALIFICATIONS

Based on the responses to the RFQ process, TRF will identify Respondents deemed qualified to perform the legal services described in Exhibit A, Scope of Work.

TRF reserves the right to reject any or all responses.

SECTION THREE RESPONSE PREPARATION INSTRUCTIONS

3.1 GENERAL

To facilitate the timely evaluation of responses, a standard format for submission has been developed and is documented in this section. All Respondents are required to format their responses in a manner consistent with the guidelines described below:

- Each item must be addressed in the Respondent's response, or the response may be rejected.
- The transmittal letter should be in the form of a letter. The response must be organized under the specific section titles as listed below.

A complete response will include the following:

1. Hard copy submission of a transmittal letter (with the information in Section 3.2)
2. Hard copy submission of a Response (with the information and attachments described in Section 3.3)
3. Completed Minimum Qualifications Certificate and Questionnaire.
4. Original, three copies, and CD ROM of entire response as outlined in Section 1.3

3.2 TRANSMITTAL LETTER

The Transmittal Letter must address the following topics:

3.2.1 Identification

The transmittal letter must first identify the RFQ.

3.2.2 Summary of Ability and Desire to Supply the Required Services

The transmittal letter must briefly summarize the Respondent's ability to supply the requested services. The letter must also contain a statement indicating the Respondent's willingness to provide the requested services subject to the terms and conditions set forth in the RFQ.

3.2.3 Signature of Authorized Representative

A person authorized to commit the Respondent to its representations must sign the transmittal letter. The transmittal letter shall include a certification that all information provided in the Response is accurate and complete to the best of the Respondent's knowledge, based upon due and diligent inquiry. Please also acknowledge Respondent's understanding that any false or misleading information may result in disqualification from the RFQ at TRF's discretion.

3.3 RESPONSE

The Response must contain the following items:

3.3.1 Ability to perform Scope of Work

Respondent should demonstrate in this section its ability to meet the requirements set forth in Exhibit A, Scope of Work.

3.3.2 References

The Respondent should include a list of at least three (3) clients for whom the Respondent has provided services that are the same or similar to those services requested in this RFQ. Any state government or pension fund for which the Respondent has provided these services should be included. Information provided should include the name, address, and telephone number of the client facility and the name, title, e-mail address, and phone/fax numbers of a person who may be contacted for further information.

3.3.3 Registration to do Business

Respondents proposing to provide services required by this RFQ are required to be registered to do business within the state by the Indiana Secretary of State. It is the successful Respondent's responsibility to complete the required registration with the Secretary of State. The Respondent must indicate the status of registration in this section of the Response.

3.3.4 Minority and Women's Business Enterprise Participation Plan

The State of Indiana is interested in encouraging the participation of minority-owned and women-owned firms, as well as the participation of minority and women attorneys. If your firm qualifies as a minority-owned or women-owned firm, please provide the appropriate certifications. Alternatively, please provide information regarding the number of minority and women attorneys that have an ownership interest in your firm, as well as which of these attorneys practice in the area involving the legal functions described herein for which your firm is responding.

3.3.5 Compliance with Ethics Provisions

Any firm engaged to serve as legal counsel for the functions described in the RFQ will be required to certify that each member of the firm that interacts with State employees is aware of and shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code §4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 05-12, dated January 10, 2005. If you are not

familiar with these ethical requirements, you should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at www.in.gov/ethics. Any violation of these standards by a member of your firm may result in TRF (in its sole discretion) terminating your firm's engagement immediately.

3.3.6 Compensation for Services

The Respondent must describe the proposed method of compensation for the services, including expense reimbursement that would be involved in performing the legal functions described in Exhibit A, Scope of Work. Although the fee proposal will not be a despositive criterion in the selection process, the TRF Board is interested in understanding the extent to which your firm would be willing to offer special discounted rates, a fixed fee arrangement, or other “fee for service” structure in connection with providing the services. Please also detail the factors that would be used to compute fees.

3.3.7 Conflicts

TRF must interpret and administer Indiana pension laws, rules, regulations and appropriate Internal Revenue Code regulations in the management of the Fund. The interest(s) of covered employers, individual members or others may conflict with the interest(s) of the Fund as a whole. In this regard:

Please disclose any information that may materially impair the firm’s ability to provide the level of service required;

Please describe all engagements in which your firm is currently representing the State of Indiana or any of its agencies or instrumentalities;

Please describe all engagements in which your firm is currently representing a covered employer;

Please describe all engagements in which your firm is currently representing covered employers or members with respect to employment contracts, benefits and compensation for employee positions or employers covered by the Fund;

Please describe all engagement in which your firm is currently representing unions or employee groups whose membership contains members of the Fund; and

Please describe all engagements in which your firm is currently representing a client in a matter adverse to the State of Indiana or any of its agencies or instrumentalities.

3.4 CERTIFICATION AND QUESTIONNAIRE

The Respondent must complete and provide Exhibit B, Mandatory Minimum Qualifications Compliance Certificate, and Exhibit C, Questionnaire. If a Respondent is not able to certify as to all items on Exhibit B, Respondent must note such deviation on the Certificate itself.

SECTION FOUR RESPONSE EVALUATION

4.1 EVALUATION CRITERIA

TRF has selected a group of qualified personnel to act as an evaluation team. The procedure for evaluating the responses against the evaluation criteria will be as follows:

1. Each response will be evaluated on the basis of the categories listed below.
2. Based on the results of the evaluation, the Respondents determined by TRF to be qualified to perform the legal services described in Exhibit A may be selected by TRF for future engagements.
3. In addition, the evaluation team will consider other factors they believe to be material for this selection.

Responses will be evaluated based upon the proven ability of the Respondent to satisfy the requirements in an efficient, cost-effective manner, taking into account quality of service with minimal tolerance for error. Specific criteria include:

1. Fulfilling the requirements set forth in the RFQ;
2. Experience in the field of legal services for public and private pension funds;
3. Competitiveness of the fee structure relative to other Respondents; and
4. Quality, timeliness, and thoroughness of Respondent's submission to this RFQ.

All responses will be reviewed by members of TRF. References may be contacted. It is possible that a qualified Respondent will be interviewed by persons participating in the selection process.

4.2 CONTRACT

Exhibit D is the base contract that will be used if an award is made. Any or all portions of this document are incorporated by reference as an addendum to the final contract. **If Respondent wants to include or change any term of the contract, it must be submitted as an amendment to the contract.** See the next section for more instructions on this. Any requests for changes in the contract must be submitted as part of the response to the RFQ.

4.2.1 Respondent Contract Requirements

If the Respondent wishes to include or change any language in the contract being submitted, proposed language should be included in this section in the form of an amendment to the contract. For each change included, the Respondent should indicate that the change is required by the Respondent in any contract resulting from this RFQ and why it is required (if the required change is unacceptable to PERF, the Respondent's proposal may be considered unacceptable), or the Respondent should indicate that the change is desired (but not required) in any contract resulting from this RFQ.

4.2.2 TRF will not agree with any term or condition of a contract that:

1. Requires that suit be brought in any State other than Indiana or requires that the contract be construed in accordance with the laws of any State other than Indiana. Indiana Code Section 34-13-2-3(d) specifically provides that the State's consent to be sued on contract claims shall not be construed as a waiver of the State's Eleventh Amendment rights, as consent to be sued in federal court, or in any state court beyond the boundaries of Indiana.
2. Requires TRF to provide indemnity or hold a contractor harmless. The Indiana Constitution, Article X section 3, provides that no money shall be drawn from the Treasury, but in pursuance of appropriations made by law. An agreement by TRF to give a future indemnity is in essence committing money to be drawn from the Treasury without appropriation. Moreover, such an agreement might be viewed as waiving the provisions of the Indiana Tort Claims Act.
3. Requires TRF to provide insurance except as permitted by IC 4-13-1-17(b) or section 34-13-3-20(b).
4. Requires TRF to pay a retainer or make a deposit not specifically permitted by IC 4-13-2-20 or 4-20.5-5-7.
5. Requires TRF to pay penalties, liquidated damages, interest, or attorney fees except as permitted by IC 5-17-5 and IC 34-54-8.
6. Requires limiting disclosure of the contract in violation of Indiana's Access to Public Records Act.
7. Requires TRF to pay taxes as TRF is tax exempt.
8. Requires for mandatory resolution of disputes other than the courts. As a policy matter, TRF keeps its options open. TRF prefers whenever possible to resolve contract disputes informally. If informal dispute resolution fails, the parties can agree at that time and in light of the particular dispute to submit to arbitration or mediation.
9. Requires modifying the statute of limitations or relating time within which a claim must be made.
10. Any provision that attempts to apply comparative fault principles in an action between parties. Indiana Code Section 34-51-2-2 provides that comparative fault principles do not apply in any manner to tort claims against governmental entities or public employees under IC 34-13-3.

4.2.3 Terms and Conditions Required in TRF Contracts to Remain Unchanged (Exhibit D):

1. Conflict of Interest
2. Registration with Secretary of State
3. Drug Free Workplace Certification
4. Ethics
5. Telephone Privacy Compliance
6. Indemnification
7. Nondiscrimination
8. Non-Collusion Affirmation

EXHIBIT A

SCOPE OF WORK

The law firm(s) selected by TRF shall, on an as-needed basis, provide legal services including, but not limited to, the following:

1. Providing analysis of state and federal laws, rules, and regulations governing the Fund and its members.
2. Advising the Fund on the Fund's compliance with all applicable state and federal laws, including all qualification issues under the Internal Revenue Code.
3. Assisting in the drafting of various plan documents, including state laws, administrative rules, and Fund policies and procedures.
4. Providing legislative updates and analysis.
5. Providing legal advice on federal tax laws and regulations.
6. Providing advice, review, and drafting services relating to the Fund's benefits administration and investment of assets.
7. Preparing and filing legal opinions regarding the Fund's operations and investment transactions, including obtaining necessary opinions, letter rulings, and other documents from the Internal Revenue Service and other state or federal regulatory or governing bodies.
8. Assisting in a variety of corporate governance matters, including performing legal research, analysis, advice, and counsel with respect to corporate governance initiatives undertaken by the TRF Board or the Executive Director.
9. Providing legal opinions on fiduciary duties.
10. Assisting in various communications on behalf of the Fund, including testifying before legislative committees.
11. Attending and making presentations at meetings at the request of the Fund's Executive Director or its General Counsel.
12. Assisting the Fund in complex litigation, including securities litigation.
13. Working with the Fund, its Executive Director, and staff in performing such other tasks and assuming such other responsibilities as are required and requested by the TRF Board or the Executive Director consistent with this Scope of Work.

EXHIBIT B
MANDATORY MINIMUM QUALIFICATIONS COMPLIANCE CERTIFICATE

Unless otherwise specified, as of the Response Due Date, Respondents must satisfy all of the requirements outlined below and furnish all appropriate proof of compliance in order to be considered for award of a Contract for Services.

- A. The firm must be a professional law firm in the business of providing the services described in Exhibit A;
- B. The firm must have provided legal services to public retirement systems or corporate pension plans similar to TRF;
- C. The attorney(s) assigned to provide services to TRF must have legal experience in the areas of employee benefits, defined benefit plans, defined contribution plans, complicated tax matters, federal, state and local legislative and regulatory issues, federal and state litigation, investment transactions, fiduciary responsibility, corporate governance, and conflicts of law affecting pension plan systems.
- D. The firm must have successfully submitted, on behalf of public pension fund clients, requests from the Internal Revenue Service for private letter rulings and/or plan determinations.

It is understood that failure to sign and return this statement and accompanying documentation with the response to the RFQ will render the Respondent Response invalid.

Company: _____ Signature: _____

Title: _____ Date: _____

EXHIBIT C QUESTIONNAIRE

Part One

The following questionnaire must be completed and included with the Response. The questionnaire has been prepared to obtain responses relative to the Respondent's capability to successfully provide all required legal services.

- 1) Provide a general description of your firm, its primary areas of concentration, and any other relevant descriptive information.
- 2) Describe the ownership structure of your firm.
- 3) Provide biographies and describe the professional and legal experience for the functions described in Exhibit A of the key individuals who would be assigned to provide legal services to TRF.
- 4) List up to three public employee retirement system or corporate pension plan clients (not including TRF) for whom the firm has provided professional legal services within the past five years. One of the reference clients must be a client who has been serviced by the proposed team. For each reference listed, include client name, address, telephone number, and name of a contact person.
- 5) How many public defined benefit plan clients does your firm serve? How many private defined benefit plan clients does your firm serve?
- 6) How many public defined contribution plan clients does your firm serve? How many private defined contribution plan clients does your firm serve?
- 7) Does your firm produce a newsletter specifically for public retirement or corporate pension plans? If so, please describe.
- 8) Does your firm have a written code of conduct or ethics in addition to the American Bar Association and state codes?
- 9) Describe the resources your firm utilizes to identify and analyze legal issues that affect your public fund clients.
- 10) Describe how your firm uses non-legal or non-attorney professional staff in performing the services described in this RFQ.
- 11) Does your firm provide any services that result in compensation from investment managers or investment consultants? If so, describe in detail.
- 12) What does your firm see as the major challenges currently facing private and public pension funds?
- 13) How does your firm measure value for your clients?
- 14) Outside of the scope of work in Exhibit A, describe any additional services of your firm.

Part Two

1. The Fund is a qualified governmental pension plan under IRS Code Section 401(a). As such, the Fund is exempt from the QDRO provisions of ERISA. Under current Indiana pension law, once a member retires and begins receiving a benefit he or she cannot change his or her co-survivor designation unless the co-survivor predeceases the member. Legislation has been proposed to allow a member to change his or her co-survivor designation after retirement in the event the retired member becomes divorced so long as the retirement benefits are not encumbered by a divorce settlement. Would such a change jeopardize the Fund's standing as a qualified governmental plan? Why? If not permissible under IRS rules and regulations, how could this change be effectuated without jeopardizing the Fund's qualification?
2. The Fund has approximately 7.8 billion dollars under management. The Board of Trustees is working on a securities litigation policy. What are the factors the Board should consider when deciding whether to pursue an individual action either under state law or federal law, become lead plaintiff or simply remain a part of a class action lawsuit? Would the amount of loss be one factor? If so, how much loss?
3. Pursuant to IC 21-6.1-5-17 benefits of the Fund are exempt from seizure, levy, process and all other processes. A trial court has appointed a Commissioner pursuant to Trial Rule 70A and in accordance with IC 31-15-17-10 to change a member's beneficiary designation, give limited POA to the clerk of the court to receive benefit payments and distribute part of the benefits to an ex-spouse and possibly complete a retirement application to initiate benefit payments on behalf of a member who refuses to abide by court orders and who has fled the jurisdiction of the trial court. What are the legal issues involved? What authority does a Commissioner have under these circumstances?

EXHIBIT D CONTRACT

PROFESSIONAL/PERSONAL SERVICES CONTRACT

This Contract (“this Contract”), entered into by and between The Indiana State Teachers’ Retirement Fund (the “Fund” or “TRF”) and _____ (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor

The Contractor shall provide the following services relative to this Contract:

On an as-needed basis, provide legal services including, but not limited to, the following:

1. Providing analysis of TRF and federal laws, rules, and regulations governing the Fund and its members.
2. Advising the Fund on the Fund’s compliance with all applicable TRF and federal laws, including all qualification issues under the Internal Revenue Code.
3. Assisting in the drafting of various plan documents, including TRF laws, administrative rules, and Fund policies and procedures.
4. Providing legislative updates and analysis.
5. Providing legal advice on federal tax laws and regulations.
6. Providing advice, review, and drafting services relating to the Fund’s benefits administration and investment of assets.
7. Preparing and filing legal opinions regarding the Fund’s operations and investment transactions, including obtaining necessary opinions, letter rulings, and other documents from the Internal Revenue Service and other TRF or federal regulatory or governing bodies.
8. Assisting in a variety of corporate governance matters, including performing legal research, analysis, advice, and counsel with respect to corporate governance initiatives undertaken by TRF Board or the Executive Director.
9. Providing legal opinions on fiduciary duties.
10. Assisting in various communications on behalf of the Fund, including testifying before legislative committees.
11. Attending and making presentations at meetings at the request of the Fund’s Executive Director or its General Counsel.

12. Assisting the Fund in complex litigation.
13. Working with the Fund, its Executive Director, and staff in performing such other tasks and assuming such other responsibilities as are required and requested by the TRF Board or the Executive Director consistent with this Scope of Work.

2. Consideration

Remuneration under this contract will be paid pursuant to Exhibit A.

3. Term

This Contract shall be effective for a period of three (3) years. It shall commence on _____ and shall remain in effect through _____.

4. Renewal Option

This Contract may be renewed under the same terms and conditions, subject to the approval of the Board of Directors of TRF. The term of the renewed contract may not be longer than the term of the original contract.

5. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by TRF or its authorized designees. Copies shall be furnished at no cost to TRF if requested.

6. Assignment; Successors

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without TRF's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of TRF, provided that the Contractor gives written notice (including evidence of such assignment) to TRF thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

7. Audits

The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by TRF.

8. Authority to Bind Contractor

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by the Contractor when accepted by TRF.

9. Changes in Work

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by TRF. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

10. Compliance with Laws

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by TRF and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with TRF as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 05-12, dated January 1, 2005. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, TRF may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6 and 4-2-7.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify TRF of any such actions. During the term of such actions, the Contractor agrees that TRF may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and TRF decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that TRF may delay, withhold, deny, or apply under this section shall not be subject to

penalty or interest under IC § 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for TRF. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with TRF.

H. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

I. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

11. Condition of Payment

All services provided by the Contractor under this Contract must be performed to the Fund's reasonable satisfaction, as determined at the discretion of the undersigned TRF representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. TRF shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of TRF Information

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of TRF.

13. Conflict of Interest

A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of the Contractor, if the Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means State Ethics Commission.

- B. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of TRF.
- C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by TRF of the interested party does not violate any statute or rule relating to ethical conduct of TRF employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.
- D. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of TRF. The obligation under this section extends only to those facts that the Contractor knows or reasonably could know.

14. Debarment and Suspension

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee, attorney or paralegal providing services to TRF, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all lawyers receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify TRF if any lawyer providing services under this contract becomes debarred or suspended, and shall, at the Fund’s request, take all steps required to terminate work to be performed by such person under this Contract.

15. Default by TRF

If TRF, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

16. Disputes

- A. Should any disputes arise with respect to this Contract, the Contractor and TRF agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by TRF or the Contractor as a result of such failure to proceed shall be borne by the Contractor.

TRF may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by TRF to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract. herein.

The parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

17. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to TRF within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in TRF of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with TRF for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying TRF in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

19. Funding Cancellation

When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

21. Indemnification.

The Contractor agrees to indemnify, defend, and hold harmless TRF, its agents, officers, and employees from all claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. TRF shall **not** provide such indemnification to the Contractor.

22. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as

agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees. The Contractor will also ensure that all lawyers providing services under this contract have adequate malpractice insurance.

23. Key Person(s)

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, TRF shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of TRF.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are _____

24. Licensing Standards

The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. TRF shall not be required to pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification or accreditation, the Contractor shall notify TRF immediately and TRF, at its option, may immediately terminate this Contract.

25. Merger & Modification.

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

26. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not

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discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

27. Notice to Parties

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

- A. Notices to TRF shall be sent to:
Thomas N. Davidson, General Counsel
Indiana State Teachers' Retirement Fund
150 West Market St., #300
Indianapolis, IN 46204
- B. Notices to the Contractor shall be sent to:
(Include contact name and/or title, name of vendor, specific address.)
- C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of TRF.

28. Order of Precedence; Incorporation by Reference

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by TRF, (3) the RFQ, (4) Contractor's response to RFQ, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

29. Ownership of Documents and Materials.

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to TRF and all such materials will be the property of TRF. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of TRF, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by TRF and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to TRF.

30. Reports

The Contractor shall submit reports under this Contract to the Funds upon request, and in no event less than as of each month end. The report shall be written. The report shall be in a form agreed to between the Fund and Contractor.

At Funds' request and at mutually agreed upon times, Contractor shall meet with the Funds to review Contractor's performance. Contractor shall be available to answer questions by the Fund's General Counsel, Executive Director and Board members from time to time as needed without additional charge.

31. Payments

All payments shall be made in arrears in conformance with TRF fiscal policies and procedures and, as required by law. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract.

32. Penalties/Interest/Attorney's Fees

TRF will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the Fund's failure to make prompt payment shall be based solely on the amount of funding originating from TRF and shall not be based on funding from federal or other sources.

33. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

34. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

35. Taxes

TRF is exempt from most TRF and local taxes and many federal taxes. TRF will not be responsible for any taxes levied on the Contractor as a result of this Contract.

36. Termination for Convenience

This Contract may be terminated, in whole or in part, by TRF whenever, for any reason, TRF determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be

compensated for services properly rendered prior to the effective date of termination. TRF will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original

contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

37. Termination for Default

A. With the provision of thirty (30) days notice to the Contractor, TRF may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If TRF terminates this Contract in whole or in part, it may acquire, under the terms and in the manner TRF considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to TRF for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. TRF shall pay the contract price for completed supplies delivered and services accepted. The Contractor and TRF shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. TRF may withhold from these amounts any sum TRF determines to be necessary to protect TRF against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of TRF in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

38. Travel.

No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by TRF and in accordance with TRF Travel Policies and Procedures. Out-of-state travel requests must be reviewed by TRF for availability of funds and for appropriateness per Circular guidelines.

39. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

40. Work Standard.

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If TRF becomes dissatisfied with the work product of or

the working relationship with those individuals assigned to work on this Contract, TRF may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

41. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and TRF have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

(Contractor:)

By: _____
Printed Name: _____
Title: _____
Date: _____

(TRF):

By: _____
Printed Name: _____
Title: _____
Date: _____

CONTRACT EXHIBIT A

FEEES

Describe rates and fee structure for services rendered under this contract: